

Before the
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FEDERAL COMMUNICATIONS COMMISSION
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CC Docket No. 93-36

In the Matter of
Tariff Filing Requirements for
Nondominant Common Carriers

Comments of Avis Rent A Car System, Inc.

Avis Rent A Car System, Inc. ("Avis"), through its attorneys, hereby comments on the Commission's proposal to streamline. to the maximum extent possible. the tariff filing

I. INTRODUCTION

On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit vacated the Fourth Report of the Competitive Carrier proceeding.^{1/} The Forbearance Decision invalidated the Commission's long-standing permissive detariffing rules for nondominant carriers. As a consequence, on January 6, 1993, Avis filed its Tariff F.C.C. No. 1 with the Commission. No Petition To Reject or To Suspend and Investigate was filed and Avis' tariff went into effect on January 20, 1993.

Pursuant to its tariff, Avis resells the voice and data services of AT&T described in AT&T FCC Tariff No. 12, Option 60. Avis' tariff states that "[t]he rates, terms and conditions applicable to its offering are generally reflected in the American Telephone and Telegraph Tariff F.C.C. Tariff 12, Option 60 in its present form and as such tariff may be modified in the future, except as otherwise modified by specific customer contracts."

On February 19, 1993, the Commission adopted and released the Notice of Proposed Rulemaking in this proceeding ("the Notice") which tentatively concluded that "some of our existing streamlined tariff filing requirements are unnecessary for, and burdensome on, nondominant carriers."^{2/} As a consequence, it initiated this rulemaking proceeding to streamline such

^{1/} AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), rehearing en banc denied, January 21, 1993 ("Forbearance Decision").

^{2/} Notice at para. 12.

requirements to the maximum extent possible consistent with its statutory obligations. Specifically, it proposed that domestic nondominant common carriers be allowed to (1) file their interstate tariffs on not less than one day notice; (2) state in their tariffs either a maximum rate or a range of rates; and (3) have flexibility in formatting their tariff filings.

II. MAXIMUM STREAMLINING FOR DOMESTIC NONDOMINANT RESELLERS

Avis strongly supports the Commission's desire to streamline, to the maximum extent possible, the tariff filing requirements imposed on nondominant carriers. As the Commission itself recognizes, existing tariff regulation on nondominant carriers inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends.^{3/}

However, Avis believes that additional streamlining measures may be necessary and desirable for domestic nondominant resellers.^{4/} The Commission has long recognized that such carriers warrant special regulatory flexibility. For example, because of the clear and undisputed need to relieve such carriers

^{3/} Id.

^{4/} See id. at para. 13 (requesting comment on whether any categories of nondominant carriers can and should be regulated differently than nondominant carriers generally.) The Commission has defined resale as "the subscription of communications services and facilities by one entity and the reoffering of communications service and facilities to the public (with or without 'adding value') for profit." Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 263 (1976) ("Facilities Resale Order").

of tariff filing requirements, resellers of basic domestic terrestrial communications services were the first nondominant carriers that the Commission awarded permissive detariffing.^{5/} In adopting permissive detariffing for domestic nondominant resellers, the Commission stated:

our experience has shown little public need for regulation of resellers [R]arely, if ever [have] we had the occasion to reject or suspend and investigate tariff filings of resellers Thus, the costs imposed by such regulation appear to weigh especially heavily on these carriers, resulting in the unwarranted delay of new services and marketing strategies [R]ather than relying on tariff regulation, competitive market forces and the complaint process of Section 208 of the Act would be sufficient to ensure that resellers' rates are reasonable and not unjustly discriminatory.^{6/}

Although the Forbearance Decision invalidated permissive detariffing, the Court expressly recognized the continuing validity of these types of policy considerations.^{7/}

Moreover, the Commission has consistently recognized the public interest benefits made possible by not inhibiting the provision of resale.^{8/} If the Commission is serious about this

^{5/} Competitive Carrier Second Report and Order, 91 FCC 2d 59, 73 (1982).

^{6/} Competitive Carrier Second Report Reconsideration, 93 FCC 2d 54 (1983) at para. 3.

^{7/} Forbearance Decision, 978 F.2d at 736.

^{8/} For example, the Commission has found that the existence and strength of resellers has greatly enhanced long distance competition by creating steady, strong pressure toward cost-based pricing at all levels of the long distance market and reducing entry barriers, particularly capital requirements. See, e.g., Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2630 (1990); see also Regulatory Policies Concerning Resale and Shared Use of Common

policy, it should endeavor to do its utmost to ensure that its tariff filing requirements are as unintrusive on resellers as possible. At a minimum, it should allow resellers the widest latitude in negotiating with their customers on an individual contract basis. The FCC has expressly authorized AT&T to offer services pursuant to individually negotiated customer contracts that are generally available to other similarly situated customers.^{9/} Avis proposes that the Commission make explicit the right of nondominant carriers to modify their tariffs to reflect generally available individual customer contracts.

III. CROSS-REFERENCED RATES FOR NONDOMINANT RESELLERS

Avis strongly supports the proposal in the Notice that would permit nondominant carriers to file a maximum rate or range of rates with the Commission, thereby eliminating the need to file amendments unless such carriers propose to exceed that maximum or range.^{10/} Adoption of this proposal will help reduce (1) the burden of preparing and filing new schedules each time

^{8/}(...continued)

Carrier Domestic Public Switched Network Services, 83 FCC 2d 167, 175-6 (1980); Facilities Resale Order, 60 FCC 2d 261 (1976), recon., 62 FCC 2d 588 (1977), aff'd, AT&T v. FCC, 572 F.2d (2d Cir.), cert denied, 439 U.S. 875 (1978); AT&T, Restrictions on Resale and Sharing of Switched Services, 53 Rad. Reg. 2d (P&F) 112 (1983), aff'd sub nom., NARUC v. FCC, 746 F.2d 1492 (D.C. Cir. 1984).

^{9/} Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd. 5880, 5897-5903 (1991).

^{10/} Notice at para. 13.

nondominant carriers wish to implement minor rate revisions, and (2) the attendant administrative costs of such filings. Moreover, it will not unduly interfere with the right of nondominant carriers to tailor their services for different customers.

However, further streamlining is possible and desirable for domestic nondominant resellers. Specifically, Avis proposes that the Commission amend Section 61.74 of the Rules to permit resellers reoffering service that is substantially identical to that offered by the underlying carrier to establish a maximum or range of tariff rates, as well as other terms and conditions, by cross-referencing the underlying carrier's tariff.^{11/} Indeed, the Notice's proposal to "allow carriers to state, in any form, the tariff charges and the classifications, practices and regulations affecting such charges"^{12/} may have contemplated the ability for resellers to cross-reference the underlying carrier's tariff.

There are several strong policy reasons to support allowing resellers to meet their Section 203 obligations by filing a tariff that cross-references the underlying carrier's tariff. By definition, resellers merely reoffer the underlying facilities carrier's services, typically under rates, terms, and conditions

^{11/} If resellers seek to offer rates that exceed the maximum or range, Avis proposes that they be permitted to amend their tariff to provide such information in a non-cross-referenced format on one day's notice.

^{12/} Notice at para. 25.

virtually identical to those that the underlying carrier offers to the reseller.^{13/}

For entities like Avis reselling AT&T services, the underlying carrier's rates, terms, and conditions are already on file with the Commission as part of AT&T's tariff(s). Pursuant to the Forbearance Decision, other facilities carriers will be required to file the rates, terms, and conditions for their interstate offerings. Absent significant deviation from the underlying carrier's tariff, the filing of more than a cross-reference to that tariff by the reseller is unnecessary and burdensome. Although it is not yet clear how complex or voluminous the tariff filings of underlying carriers other than AT&T will be, forcing a reseller like Avis to replicate even a portion of the hundreds of pages of rate structures, volume level and commitment requirements contained in AT&T's Tariff 12 would be extremely burdensome,^{14/} and arguably in conflict with the Commission's policy to encourage resale.^{15/} Indeed, there is ample FCC precedent for permitting tariff cross-referencing where

^{13/} Other than rates, there are few terms or conditions that a reseller is in a position to vary. For example, the term of resold volume or term discounts, renewal options, and the services available essentially are within the control of the underlying facilities carrier, not the reseller.

^{14/} For example, in addition to the herculean task of making its initial filing, such a requirement would force resellers to file amendments each time the underlying carrier does and, in cases where AT&T bills the resellers' customer directly, create an administrative nightmare because of the possibility of a day or two lag in the effectiveness of the resellers' tariff revisions.

^{15/} See note 8 supra.

the material to be referenced is voluminous or complex^{16/} or for carriers whose provision of service may warrant some regulatory flexibility.^{17/}

Moreover, given that the underlying carrier controls typically the rates, terms, and conditions under which the resale service is offered, the reseller is constrained in its ability to fix unreasonably high rates.^{18/} Moreover, since nondominant resellers, by definition, do not possess marketpower,^{19/} it is

^{16/} See, e.g., Private Line Rate Structure and Volume Discount Practice, Report and Order, 97 FCC 2d 923 (1984) at para. 28 (allowing the cross-referencing of rate structures and associated terms and conditions to avoid complexity); AT&T, Memorandum Opinion and Order, 69 FCC 2d 1672 (1978) at para. 23 (stating that cross-referencing may be appropriate for predivestiture AT&T where the material is voluminous or in other situations where reproduction is impractical).

^{17/} See, e.g., Access Filings for Small Telephone Companies, Memorandum Opinion and Order, 3 FCC Rcd. 7173 (1988) (waiving Section 61.74(a) of the Commission's Rules to enable small LECs to reference the National Exchange Carrier Association simplified terms and conditions tariff); Telefonica Larga Distancia de Puerto Rico, Order, 7 FCC Rcd 4423 (1992) at n.2 (finding that an Alternative Operator Service provider's amendment of its tariff to include cross-references to sections of its tariff that described the rate, terms, and conditions of its operator services was in substantial compliance with the informational tariff filing requirements of the Telephone Operator Consumer Services Improvement Act of 1990); AT&T, Order, 89 FCC 2d 369, 374 (1982), aff'd, MCI v. FCC, 822 F.2d 80 (D.C. Cir. 1987) (permitting the rates of Other Common Carriers to change as a result of a cross-reference to AT&T's Tariff No. 260 rates).

^{18/} See, e.g., Competitive Carrier Second Report Reconsideration at n. 13 (noting that where the underlying carrier from whom the reseller obtains transmission capacity remains subject to regulation, the ability of resellers to fix unreasonably high rates is constrained.)

^{19/} See Competitive Carrier First Report and Order, 85 FCC 2d 1 (1980). The Forbearance Decision did not affect the classification of resellers as nondominant carriers. See Notice at para. 6.

not clear how resellers would have the ability to maintain such high rates over time. Indeed, given the intensely competitive nature of services subject to resale, resellers would have no incentive to fix unnecessarily high rates; customers of resale service have, and frequently exercise, the ability to change to carriers offering less expensive services. Moreover, the complaint process of Section 208 remains available if market aberrations should occur.

IV. GRANDFATHERING OF NONDOMINANT TARIFFS ALREADY IN EFFECT

If the Commission declines to adopt this proposal in its new rules, Avis proposes that the Commission grandfather those nondominant carriers' tariffs that have been allowed to go into effect as of the date of the Notice. Forcing nondominant

V. CONCLUSION

For the foregoing reasons, Avis proposes that the Commissioner endeavor to do its utmost to ensure that the tariff filing requirements imposed on domestic nondominant resellers be as unintrusive as possible. At a minimum, the Commission should (1) allow nondominant carriers to operate pursuant to individual customer contracts to the maximum extent possible, and (2) amend Section 61.74 of the Rules to authorize resellers to cross-reference the rates, terms and conditions of the underlying carrier's tariff. Alternatively, if the Commission declines to adopt the proposed amendments, it should amend them